IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1067 OF 2005

Ravi Prakash Goyal .. Petitioner
Versus
Intelligence Officer, Narcotics Control Bureau, Ballard Estate and Anr. .. Respondents

Mr.K.T.S.Tulsi, Senior Advocate with Vikas Pahwa, V. Hari Pillai, Rajesh Sharma and J.S.Saluja for applicant
MrD.N.Salvi with Raja Thakare for respondent No.1
Mr.S.S.Tatkare, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 7th February 2006.

P.C.

. This petition under Article 227 of the Constitution of India read with Section 482 of Cr.P.C. seeks following reliefs:-

(a) Call for records, documents, proceedings, statements record relating

to the said investigation conducted by respondent No.1 in R.A.No. 39 of 2005;

(b) stay the proceedings till the pendency of the instant petition for quashing;

(c) to quash and set aside the investigation/ proceedings pending before the respondent No.1

(d) for further and other reliefs as the nature and circumstances of the case may require;

2. Applicant, although being released on bail by the learned Special Judge prays that proceedings in the above special case be quashed. Admittedly, the special case is under the Narcotic Drugs and Psychotropic Substances Act, 1985. According to applicant, who has been

impleaded as respondent in Criminal Application No.3295 of 2005, the activities carried on by him do not fall within the prohibitory measures/ provisions envisaged by N.D.P.S. Act. He, therefore, submits that all investigations and proceedings initiated pursuant thereto are bad in law and the special case deserves to be quashed by this Court in its inherent jurisdiction.

3. The pleas raised by Mr.Tulsi, learned Senior Counsel appearing for respondent in Criminal Application No.3295 of 2005 are reiterated by him in support of this application. On the other hand, Mr.Salvi appearing for prosecution has pointed out that this is a case where, apart from the applicant, other accused have been charged with serious offences. He has invited my attention to the affidavit filed by Mr.Henry, Intelligence Officer, N.C.B., Mumbai.

4. After taking into consideration the rival

contentions and noticing the statement in para 18 of the affidavit in reply filed by the Investigating Officer, this is not a fit case for quashing the entire special case. The application for enlarging the applicant on bail was considered by the Special Court on the basis that prima facie, the provisions of NDPS Act would not apply to the operations of applicant. However, this Court in Criminal Application No.3295 of 2005, while upholding the aforesaid order and rejecting the Bureau's application for cancellation of bail has observed thus:-

> "2. At the outset it is clarified that the applicant seeks to cancel the bail granted to the accused, therefore, all observations and findings of the trial court as well as this Court are made while disposing off the bail application. They are obviously prima facie and shall not prevent the Court

below from recording its finding on merits at the conclusion of the trial.

3. The bail application before the trial court was argued on the basis that Narcotic Drugs and Psychotropic Substances Act (NDPS Act for short) itself does not prohibit operations which are carried on by the applicant accused. The argument proceed on the basis that if relevant provisions of the Act and the Rules as well as Schedules appended thereto are perused, then, it is prima facie clear that operations in question are not covered by the prohibitory measures envisaged by the Act. Therefore, the Act itself is inapplicable and the bail application will have to be considered on this basis. Once, it is considered on this basis, then, the embargo contained under section 37 would

not apply.

4. It is further clarified that I have considered the submissions of both sides on the above premise and basis and my conclusion would necessarily govern the facts and circumstances in this case. Ultimately, the prohibition contained in the statute must be seen in the context of individual operations and the Psychotropic Substance in question. It is only thereafter, that bail applications raising such a plea can be decided."

5. In my view, the entire case is narrated briefly in the affidavit filed to oppose this application. The allegations are not just that the applicant was dealing in Psychotropic Substance but his dealings were not in compliance with the terms and conditions of the Drug Licence

as well. In this behalf, the statements in paras 8 and 9 of the affidavit are relevant. Further, the reliance upon a notification dated 25th February 2005 to support the case of Applicant involves the issue of its applicability as pointed out in para 11 of the affidavit. The non adherence by the petitioner allegedly with the form and procedure prescribed is also the basis of the charges.

6. Thus taking an overall view of the matter, at the instance of applicant, the investigation and the proceedings cannot be quashed. The materials relied upon by the prosecution will have to be scrutinised completely by the trial court.

7. It is for the trial court to go into the contentions raised in this application and merely because I am not inclined to exercise my inherent powers, would not prevent the applicant from

raising the contentions and placing materials in support thereof before the trial court. These materials would be certainly adverted to by the trial court. This is not a case where inherent powers should be exercised to quash the entire special case in question. Considering the object and purpose of the NDPS Act and in public interest as well, powers under section 482 which in any event, have to be sparingly exercised, need not be exercised in the facts and circumstances of this case.

8. In the result, application is dismissed. All contentions on merits of both sides are expressly kept open.

(S.C.DHARMADHIKARI, J)